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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Wyndham IP Corporation

Serial No. 75/931,500

Valerie Verret of Baker Botts, L.L.P. for Wyndham IP Corporation.

Glenn G. Clark, Trademark Examining Attorney, Law Office 115 (Thomas Vlcek, Managing Attorney).

Before Cissel, Hohein and Drost, Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

Wyndham IP Corporation (applicant) filed a trademark application to register the mark WYNDHAM WIRED (in typed form)¹ on the Principal Register for services identified as "hotel services, namely offering high-technology room

¹ Serial No. 75/931,500, filed February 29, 2000. The application is based on applicant's allegation of a bona intention to use the mark in commerce.

furnishings upgrades to business travelers" in International Class 42.

The Examining Attorney required applicant to disclaim the term "WIRED" under the provisions of Section 6(a) of the Trademark Act. 15 U.S.C. §§ 1052(2)(e)(1) and 1056(a). When the Examining Attorney made the requirement for a disclaimer final, applicant filed a notice of appeal. Both applicant and the Examining Attorney have submitted briefs, but no oral argument was requested.

The Examining Attorney's position is that "business travelers are using the word 'wired' to mean that the hotel will have Internet access and other electronic connections." Brief at p. 4. The Examining Attorney introduced numerous printouts from the Internet and the NEXIS automated database that show use of the term "wired" in relation to hotels. Some examples are set out below:

Just a few years ago, a hotel could call itself "**wired**" if it offered a dedicated phone line for an Internet or fax connection. Today, being **wired** means something entirely different. The newest properties are opening with rooms featuring dedicated, high-speed Internet connections at T-1 speeds - that's 100 times faster than the fastest phone modem - or higher. Existing hotels are retrofitting their rooms to accommodate a surging demand for fast Net access. Entrepreneur.com, www.entrepreneur.com.

Woodfin Suites are among the best **wired** hotels in the nation, featuring Internet hook-ups in each suite. Woodfin Suite Hotels, www.woodfinsuitehotels.com/news/factsheet

Wired Hotels

Here's a roundup of the high-tech plans of hotel companies, plus details on some especially **wired** properties.

Technology Meeting and Incentive Solutions,
www.meetingsnet.com.

Billing itself as New York's "most **wired**" hotel, the Holiday Inn-Wall Street District opened its doors last week to serve the high-tech lodging needs of the downtown financial community and neighboring Silicon Alley. The 138-room, 15-suite hotel ... is the only property in NYC to offer a T-1 connection in every guestroom.

ISHC, www.hotelinteractive.com.

Hotels Going Broadband

Hotels are scrambling to add broadband access to their guest, meeting and conference rooms, according to a recent report ... The report, "The **Wired** Room: Hotel Broadband Preference Analysis," is available for \$1995. PCWORLD.COM, www.pcworld.com/news.

Find a **Wired** Hotel

[I]t pays to have a room with high-speed Internet access. The Geektools.com guide to "Geek Hotels" is a simple way to find the most **wired** hotels around the globe, as it provides listings for 29 states and seven countries.

ECompany Now, www.ecompany.com.

Hotel rooms get **wired** to meet corporate travel demands Billed as "the **wired** hotel," the Hilton also has a fully equipped business center.

Business Journal, www.sanjosebcentral.com.

Wired Hotels

Tests have started or are about to in 10 hotels, two of them in Washington, D.C., and the rest along the West Coast, for a new Internet access from hotel rooms. The system allows the guest to plug into a jack separate from the hotel's regular telephone system.

Star-Tribune (Minneapolis), April 6, 1998, p.5D.

Only a handful of U.S. hotels have in-room Net access, though many are considering it... Another **wired** hotel is the Sherman House in San Francisco.
Investor's Business Daily, August 15, 1997, p. A1.

If you're a guest traveling with your laptop and hope to hook in at one of these **wired** hotels, it's a good idea to bring your connection.
Investor's Business Daily, July 5, 2000, p. A8.

Supported by this and the other evidence² in the file, the Examining Attorney submits that the word "wired" is merely descriptive for hotel services and that the combination of the word "Wired" with "Wyndham" does not create "a unitary mark having a separate, nondescriptive meaning." Brief at p. 9.

In its brief, applicant maintains that "[t]he word *Wired* imparts a double entendre when used in connection with applicant's upgrade program." Brief at p. 3. Applicant relies on an alternative definition of "wired" in which the word is defined as "well connected, as with high-ranking members of a organization."

Since Applicant's mark will identify an upgrade program, Applicant contends that its mark implies that participants in the program have "connections" that result in room upgrades, and are well-connected (and treated accordingly) when staying at Applicant's hotels. As a result, when used in connection with Applicant's upgrade program, the word WIRED imparts a clever double entendre.

² In addition to the NEXIS and Internet evidence, the Examining Attorney submitted a dictionary definition that defines "wired" as "equipped with a system of wires, as for electronic or telephone connections."

Brief at p. 4.

Applicant also argues that the Examining Attorney's evidence³ shows different uses of the term "wired," such as wiring money to a hotel or using listening devices in a hotel room, and these alternative uses undercut the Examining Attorney's argument that the term is merely descriptive and properly subject to a disclaimer requirement.

Because we agree with the Examining Attorney that the term "WIRED" is merely descriptive of "hotel services, namely offering high-technology room furnishings upgrades to business travelers," we affirm the Examining Attorney's requirement for a disclaimer of that word.

A mark is merely descriptive if it immediately describes the ingredients, qualities, or characteristics of the goods or services or if it conveys information regarding a function, purpose, or use of the goods or services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978). See also In re Nett Designs, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). We must consider the mark in relation to the goods or services, and not in the abstract, when we determine

³ We agree with applicant's objection to the printouts from wire services, and therefore, we have not considered them.

whether the mark is descriptive. Abcor, 588 F.2d at 814, 200 USPQ at 218. Courts have long held that to be "merely descriptive," a term need only describe a single significant quality or property of the goods. In re Gyulay, 820 F.2d 1216, 1217, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); Meehanite Metal Corp. v. International Nickel Co., 262 F.2d 806, 807, 120 USPQ 293, 294 (CCPA 1959).

The Examining Attorney has provided significant evidence that the term "wired" is commonly used to describe hotel rooms that have high-speed Internet connections. Such evidence shows, among other things, that simply providing an Internet connection is no longer sufficient; hotels are now offering rooms with high-speed Internet connections. Under a headline that reads "Supercomputers and **wired** hotels," a "wired" hotel has been called "the region's first truly *high-tech* hotel. To wit: the first hotel in the area with high-speed internet access in its guest rooms." *The Business Journal Portland*, Portland.bcentral.com. Another article offers a "roundup of the *high-tech* plans of hotel companies, plus some details on some especially **wired** properties." Technology Meeting and Incentive Solutions, www.meetingsnet.com. In an article entitled "Trekmeister: **Wired** Hotels" reports that it "is a rapidly increasing trend, with the industry

competing to bring all the comforts of the *high-tech* office to thousands of hotel rooms around the world." FSB Travel, www.fsb.com. In another article, entitled "Hotel rooms get **wired** to meet corporate travel demands," it is reported that some "large corporations--Intel Corp. and Hewlett-Packard Co., for example--are practically demanding high-speed connectively and multiple telephone lines, at a minimum, for their business travelers." Business Journal, www.sanjosebcentral.com.

Clearly, the evidence shows that hotel rooms are frequently referred to as "wired" to describe, at a minimum, their Internet connections, and now specifically to refer to their high-speed Internet connections. These "wired" rooms are marketed to business travelers. There is even a guide that tells travelers where they can find "wired" hotel rooms. See ECompany Now, www.ecompany.com ("Find a wired hotel - Geektools.com will help you locate a hotel with high-speed Net access, a fax machine, and Ethernet hookups").

As indicated above, these "wired" hotel rooms are also described as "high-tech." Applicant's services, which are identified as "hotel services, namely offering high-technology room furnishings upgrades to business travelers," would be encompassed by the term "wired."

Therefore, we find that the term "wired" is merely descriptive of applicant's hotel services. The fact that the term "wired" can have other meanings such as wiring money and bugging a room does not take away from the fact that we look at the question of descriptiveness in regard to the services set out in the application. While "wired" would have a different meaning when applied to listening devices or money transfer services, in regards to hotel services, the term is merely descriptive of hotels featuring high-technology communications features.

Applicant, as mentioned previously, also argues that there is a double entendre in the mark because "wired" could be viewed as meaning the business traveler in the upgrade program would "have 'connections' that results in room upgrades." In light of the evidence that describes the importance of "wired" hotel rooms to business travelers, we cannot accept that this double entendre would be readily apparent to business travelers.

In re Volvo Cars of North America Inc., 46 USPQ2d 1455, 1460 (TTAB 1998) ("We hasten to add that to the extent that applicant's designation DRIVE SAFELY engenders some minor double entendre, this should not result in registration inasmuch as the primary significance of the phrase remains that of a commonplace safety admonition").

Second, when we view the mark WYNDHAM WIRED, the term "wired" appears to refer to the hotel and not to the business traveler. *Tallahassee Democrat*, February 17, 2001 ("[H]er office frequently gets calls from visitors wanting to know where **wired** hotels are located. Even if they don't have computers, such hotels are attractive to business travelers who carry portable computers and prefer high-speed to dial up access"). The mark WYNDHAM WIRED would similarly be understood to refer to applicant's hotel services featuring high technology room furnishings upgrades for business travelers. Unlike the term "light" in the mark LIGHT N' LIVELY, WIRED is not lost in the mark WYNDHAM WIRED.

The mark "LIGHT N' LIVELY" as a whole has a suggestive significance which is distinctly different from the merely descriptive significance of the term "LIGHT" per se. That is, the merely descriptive significance of the term "LIGHT" is lost in the mark as a whole. Moreover, the expression as a whole has an alliterative lilting cadence which encourages persons encountering it to perceive it as a whole. For these reasons, we believe that purchasers will not go through the mental process of breaking the mark "LIGHT N' LIVELY" into its component elements but will rather regard it as a unitary mark.

In re Kraft, Inc., 218 USPQ 571, 573 (TTAB 1983).

While both words in applicant's mark begin with the letter "W," this fact does not change the descriptive nature of the word "wired." This word simply serves to

provide additional information about applicant's hotel services concerning its high technology room furnishings upgrades for business travelers. Therefore, the term "wired" in applicant's mark WYNDHAM WIRED is merely descriptive of these services, and the Examining Attorney's requirement for a disclaimer is appropriate.

Decision: The Examining Attorney's refusal to register the mark WYNDHAM WIRED without a disclaimer of the term "WIRED" is affirmed. Under 37 CFR § 2.142(g), this decision will be set aside and the application returned to the Trademark Examining Attorney to place it in condition for publication for opposition if applicant, no more than thirty days from the mailing date of this decision, submits an appropriate disclaimer of the term "WIRED."